10/9/12

Dear Department of Ecology,

On behalf of the environmental representatives on the SEPA Rules Advisory Committee (Committee), thank you for the opportunity to comment on your revised draft rule. As you know, we are committed to preserving the integrity of the State Environmental Policy Act by supporting transparency, ensuring accountability, and protecting our diverse environment from any significant impacts that may result from development projects.

Most of our comments are focused on technical changes to clarify the rule language but we also have two substantive recommendations regarding the commercial development and grading threshold to guarantee that projects with significant impacts are adequately reviewed.

**1. <u>Categorical Exemptions</u>**

- **Add greater clarity to WAC 197-11-800(1)(b)(ii) by rewriting it** to read as follows: "*(ii) The construction or location of four multi-family residential units."* As proposed by the Department, it could be read to allow an unlimited number of multi-family buildings each with four units. Some local codes define multi-family as not including duplexes so you could keep the words "including duplexes" but we think it is clear without those words.

- **We urge the Department set the Commercial development exemption limit at or below 20,000 square feet and 60 parking spaces for urban growth areas.** When adopting a rule that defines categorical exemptions, Ecology has a statutory obligation to include only those actions that are not major actions significantly affecting the quality of the environment. RCW 43.21C.110(1)(a). It is a somewhat inappropriate science to define actions as exempted based on their size. Size is relevant, but the use proposed and the location that it is proposed in also plays a large role in whether there will be significant adverse impacts. Commercial development incorporates a large number of different types of uses that could be proposed in a wide variety of different locations, with great variation in impacts. There is a high likelihood of significant adverse impacts caused by noise, traffic, air emissions, and lights and impacts to water quality, water quantity, critical areas, aesthetics, land use, and more with large commercial uses. We believe that SEPA plays a critical role in filling the gaps to disclose, analyze, and mitigate these impacts for any commercial use larger than 20,000 square feet.

- **We strongly oppose the amendments proposed to WAC 197-11-800(1)(b)(v) and request they be amended to prevent environmental degradation** so that it reads as follows**:** *"(v) Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation not including fill or excavation under an exempt building listed above; and any fill or excavation classified as a Class I, II, or III forest practice under RCW <u>76.09.050</u> or regulations thereunder."* The Department's proposed change allows an exception for unlimited grading (over a million cu. yds.) if the applicant proposes a 10' by 10' construction office to oversee the grading. The office is exempt under subsection (iv) and the Draft then makes the grading exempt. This exemption allows major impacts without SEPA review and is contrary to the requirements for establishing exemptions. Further, the Department's proposed language has nothing to do with the mandate that Ecology was given for December, 2012.

- **Add greater clarity to WAC 197-11-800(1)(c)** in 2 important ways:
    - *"Cities, towns or counties may raise the exempt levels up to the maximum specified in Table 1 below by implementing ordinance or resolution…"* As written by the Department, it implies a jurisdiction's only option is to adopt the maximum allowed by Table 1.
    - *"…At a minimum, the following process shall be met in order to raise the exempt levels."* Our proposed clarifying language is taken from the first sentence of subsection C because strictly speaking, a raised exempt level is not flexible.

- Table 1's inclusion of a non-fully GMA planning counties is confusing because they are exactly the same as proposed for the fully planning counties. We encourage you to either consider reducing the maximum levels allowed in non-fully planning counties given that those counties generally have fewer environmental protections in place; or to remove the category altogether.

**2. Utilities**

**Please clarify WAC 197-11-800(23) that the exemption for transmission lines does have limitations by striking *"(more than 55,000 volts)"* and replacing with *"(up to and including 115,000 volts)".*** The utilities subcommittee discussions led to an agreement that the changes would be limited to transmission lines up to 115,000 volts because going above 115,000 volts would be an illegal major impact to the environment.

**3. SEPA Register**

**The Department can remove WAC 197-11-508 from the proposed rule** since there are no actual changes being proposed; instead the Department's new proposal strikes subsection f, a new clause that was proposed in a previous version of the draft.

**4. Checklist**

**Remove references to "land-use plans" in all of 197-11-315** because they do not typically have regulatory authority or change the reference to say *"land-use plans made regulatory by a development regulation"*.

Thank you for consideration of our comments. If you have any questions, please contact Claudia Newman at newman@bnd-law.com or 206-790-5249.

Sincerely,

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Ann Aagard